

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Promoting Efficient Use of Spectrum Through	)	WT Docket No. 00-230
Elimination of Barriers to the Development of	)	
Secondary Markets	)	
	)	
	)	

**COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the *Notice of Proposed Rulemaking* (NPRM) in the above-captioned proceeding.<sup>1</sup> OPASTCO is a national trade association of over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 USC §153(37). Nearly one-half of OPASTCO's members provide wireless service to consumers.

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<sup>1</sup> *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, WT 00-230, In the Matter of, FCC 00-402 (rel. Nov. 27, 2000)(NPRM).

## **I. Greater flexibility for license holders will help the FCC comply with Section 309(j)**

In Sec. 309(j) of the Communications Act of 1934, as amended (the Act), Congress specifically directed that, in order to promote competition and the public interest, rural telephone companies should be among those insured of access to spectrum licenses so that they may bring services to rural consumers without administrative delays.<sup>2</sup> Yet for some time, OPASTCO and other rural advocates have expressed concern regarding the implementation of Sec 309(j).<sup>3</sup> Too often, spectrum license rules do not give adequate regard to Congress's directive regarding rural telephone companies. These lapses at times have had the effect of limiting the scope of services available to consumers in some rural areas, contrary to Sec. 309(j).

The proposals in the NPRM may help ameliorate this situation to a degree. The Commission's proposal to provide more flexibility to license holders and reduce transactional costs to promote spectrum leasing does have the potential, as the NPRM notes, to benefit "all concerned."<sup>4</sup> OPASTCO applauds the Commission's efforts to reduce costs for small telephone companies in rural areas, and to maximize the amount of spectrum available for their use by streamlining leasing rules and adopting less restrictive usage requirements.

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<sup>2</sup> 47 U.S.C. 309(j)(3)(A-B).

<sup>3</sup> Recent examples include OPASTCO filings and joint filings in WT Docket 97-82, In the Matter of *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, specifically: Joint Ex Parte Letter of the Rural Telecommunications Group (RTG), National Telephone Cooperative Association, OPASTCO, and the U.S. Small Business Administration's Office of Advocacy to Chairman William Kennard (Nov. 13, 2000); Joint RTG/OPASTCO Petition for Reconsideration (sub. Oct. 5, 2000); RTG/OPASTCO Reply Comments (sub. June 29, 2000); RTG/OPASTCO Comments (sub. June 22, 2000). See also Joint RTG/OPASTCO Ex Parte Letter to Wireless Telecommunications Bureau Chief Thomas Sugrue, In the Matter of *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, WT Docket No. 96-18, PR Docket No. 93-253 (July 26, 1999).

<sup>4</sup> NPRM, para. 20.

## **II. Rural telephone companies' ability to serve consumers should not be hampered by attribution rules or aggregation limits**

The NPRM makes inquiries regarding how, or if, spectrum leasing arrangements should relate to regulatory caps on spectrum licenses.<sup>5</sup> The Commission should heed Sec. 309(j)'s exhortation to avoid subjecting rural telephone companies to administrative delays when they are trying to procure or otherwise manage spectrum. Rural telephone companies that obtain use of additional spectrum through leasing arrangements should not be required to count this new spectrum against any regulatory cap.

The NPRM specifically entertains "not applying the CMRS spectrum cap to spectrum leasing."<sup>6</sup> This suggestion is reasonable and desirable, especially in the case of rural telephone companies, which face a wide array of differing and often adverse operating environments. The spectrum cap only serves to make it that much more difficult for these providers to offer wireless services to rural consumers.<sup>7</sup> Therefore, declining to apply the CMRS cap to leased spectrum arrangements involving rural telephone companies would recognize the real differences experienced by small, rural carriers and serve the public interest. Just as importantly, this course of action would comport with Sec. 309(j) of the Act. It would also comply with the Regulatory Flexibility Act of 1980 ("RFA"), as amended by the Small Business Regulatory Enforcement

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<sup>5</sup> *Ibid.*, paras. 48 - 49, 96.

<sup>6</sup> *Id.*, para. 49.

<sup>7</sup> The Rural Task Force has compiled a detailed study on the different market and service characteristics of rural telephone companies, outlining not only the differences between large and small carriers, but the differences among rural carriers. *See* Rural Task Force White Paper #2, *The Rural Difference*, at <http://www.wutc.wa.gov/rtf>.

Fairness Act of 1996 (“SBREFA”),<sup>8</sup> which requires federal agencies to anticipate the impacts of regulations on small businesses, and to consider appropriate alternative approaches.

**III. Rural telephone should be permitted to use spectrum for whatever purposes meet the needs of consumers and suit the circumstances of their unique communities**

The NPRM asks whether the Commission should use its forbearance authority to permit license “swaps” among interested parties.<sup>9</sup> By allowing small carriers to exercise the flexibility needed to serve their unique communities, and reducing administrative burdens on those small carriers that may wish to pursue innovative arrangements with other license holders, the Commission would, as illustrated above, serve the public interest while comporting with Sec. 309(j) and the RFA and SBREFA.

**IV. Conclusion**

For the reasons stated above, OPASTCO encourages the Commission to comport with Sec. 309(j) of the Act by allowing rural telephone companies to lease, swap or otherwise arrange for additional spectrum without regard to spectrum caps or other unnecessary administrative burdens. In addition, rural telephone companies should have the flexibility to use the spectrum as they see fit to best serve their local communities.

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<sup>8</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

<sup>9</sup> NPRM, para. 96.

Respectfully submitted,

**THE ORGANIZATION FOR THE  
PROMOTION AND ADVANCEMENT OF  
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